

INFORMATION BULLETIN #39

INCOME TAX

NOVEMBER 2011

(Replaces Information Bulletin #39, dated February 2008)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Guidelines for Reporting Income from Indiana Sources by Nonresident Individuals

REFERENCE: IC 6-3-2-2

INTRODUCTION

Nonresident individuals deriving income from Indiana sources are subject to Indiana adjusted gross income tax. To determine Indiana income, the income derived from an Indiana business or profession must be allocated to Indiana. If a trade or business is carried on both within and outside Indiana, the nonresident's business income for all taxable years beginning after December 31, 2010, must be apportioned pursuant to the single-factor sales formula under IC 6-3-2-2.

NOTE: This bulletin addresses adjusted gross income tax. Nonresidents working in an adopting county also may be subject to county option income taxes. For more information related to county taxes, please refer to Income Tax Information Bulletin #32, available online at <http://www.in.gov/dor/3650.htm>

I. Nonresident Individual Filing Requirements

Nonresidents meeting one or more of the following criteria are required to file a Part-Year or Full-Year Nonresident Indiana Individual Income Tax Return, Form IT-40PNR:

- Nonresident individuals with Indiana income from salaries, wages, commissions, sole proprietor income, and professional fees;

- Nonresident beneficiaries of Indiana or non-Indiana trusts or estates in which the beneficiaries receive income derived from the operation of a business, rental property, or farm, controlled by the trust or on their own behalf through the value of the trust; or
- Nonresident individuals with winnings from Indiana's riverboats, casinos, or lotteries.

Nonresident partners of a partnership, nonresident members of a limited liability company treated as a partnership or an S corporation, and nonresident shareholders of an S corporation where the pass-through entity does business in Indiana are required to be a part of a composite return filed by the pass-through entity for all nonresident partners, members, or shareholders.

If the individual has other Indiana source income that is not part of the composite return, the requirement to be a part of the composite return is not eliminated. If the individual has no other source of Indiana income, being included in the pass-through entity's composite return will eliminate the requirement for the individual to file Form IT-40PNR.

Income tax withheld for a nonresident shareholder will be credited on Form IT-40PNR if the shareholder elects or is required to file Form IT-40PNR, and the income from the pass-through entity is reported on Form IT-40PNR, Schedule A, Column B (income taxed by Indiana).

II. Nonresident Individual Income Allocated to Indiana

The following types of income of a nonresident are directly allocated to Indiana:

- Salaries, wages, fees, commissions, and all other types of income received by a nonresident employee for services performed in Indiana;
- Income from a trade or business (including professional services) or a farming operation carried on entirely within Indiana;
- Income and gains received from tangible property (both real and personal) used in a business that consists mainly of holding property and collecting the income from property held in Indiana;
- Income from intangibles such as dividends, interest, and royalties if the income is derived from an Indiana business operation; and
- Winnings from Indiana's riverboats, casinos, and lotteries.

Income allocated to Indiana must be reported on the appropriate line of the Nonresident Tax Return, Form IT-40PNR.

III. Nonresident Individual Income Apportioned to Indiana

Taxable income from a trade or business carried on within and outside Indiana must be computed using the single-factor sales formula under IC 6-3-2-2(e). The sales factor is

determined by dividing the total sales made in Indiana during the taxable year by the total sales made everywhere during the taxable year, expressed as a percentage. The following represent Indiana sales:

- Sales from outside of Indiana delivered or shipped to a purchaser within Indiana, excluding the U.S. government (assuming Indiana nexus);
- Sales delivered or shipped within Indiana;
- Sales delivered or shipped from within Indiana to the U.S. government; or
- Sales delivered or shipped from within Indiana to a purchaser outside of Indiana when the taxpayer is not subject to tax in the state of the purchaser.

An apportionment schedule must be completed when calculating Indiana apportioned income for a nonresident sole proprietor, partner, shareholder of an S corporation, member of a limited liability company, or beneficiary of a trust.

To complete the schedule, the following tax information must be used in determining Indiana apportioned income of a nonresident:

- Nonresident individual proprietors: net income from federal Schedule C;
- Nonresident partners - Indiana Form IT-65: net income of a nonresident partner;
- Nonresident shareholders of S corporations - Indiana Form IT-20S: net income of a nonresident shareholder;
- Nonresident member of a limited liability company: the appropriate federal form to determine the member's distribution; and
- Nonresident beneficiaries - Indiana Form IT-41: net income of a nonresident beneficiary.

For more information concerning the allocation or apportionment of Indiana income to a nonresident or in general, please refer to Income Tax Information Bulletin #12, available online at <http://www.in.gov/dor/3650.htm>, or contact the Department of Revenue, Tax Administration Division, Room N105, Indiana Government Center North, Indianapolis, IN 46204.

A handwritten signature in black ink that reads "John Eckart". The signature is fluid and cursive, with the first letter of "John" being a large, stylized capital "J".

John Eckart
Commissioner